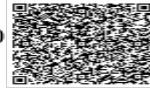


**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****107****RSA-1181-2019 (O&M)****Date of decision: 10.03.2025****Madan Lal Sharma and others****...Appellant(s)****Vs.****Municipal Committee (now Municipal Corporation),
Hoshiapur through its Executive Officer/Commissioner ...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. C.L.Sharma, Advocate for the appellants.

NIDHI GUPTA, J.

The plaintiffs are in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the appellants/plaintiffs seeking declaration to the effect that the plaintiffs are joint owners in possession of the land measuring about 28 Marlas as fully described in the head note of the plaint; and entered as such in the Jamabandi for the year 2007-08; and that there does not exist any public Park or public passage in the said land; and the plaintiffs have every right to raise the construction in the aforesaid land; and for Permanent Injunction as consequential relief restraining the defendants from claiming the existence of any part or passage in the aforesaid land from carving out any passage or putting concrete for constructing and brick paving or bitumen paving the same or creating any part in the aforesaid land, has been dismissed by both the Courts below.

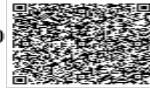


2. At the very outset, it may be pointed out that the present appeal is of the year 2019. However, notice has not yet been issued in the same as since 2019, the matter has been adjourned multiple times either due to non-appearance of, or at request of Id. counsel for the appellants.

3. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants are the 'plaintiffs'; and the respondents are the 'defendants'.

4. The brief facts of the case as stated in the plaint are that the plaintiffs were co-owners to the extent of 20 Kanals in various Khasra numbers including khasra numbers mentioned in the head note of the plaint. The plaintiffs have sold some part of their holdings. At present, plaintiffs are in possession of the land/plots as fully detailed in the head note of the plaint and shown in red and marked as A.B.C.D. in the site plan. The area now falls in the extension of Gautam Nagar Abadi. The plaintiffs have been in possession of this land and have fixed a barbed wire around the plot, which is about 20 years old.

5. It was the contention of the plaintiffs in the plaint that the disputed property does not fall in any Town Planning Scheme and official of the defendant/Municipal Committee now Municipal Corporation, has been wrongly claiming this land to be falling in the Town Planning Scheme No.3 Part-IV. To the best of the knowledge of the plaintiffs, the said Scheme was never finalized and has not been notified. A day before filing the present suit, officials of the defendant Committee threw a notice dated 13.04.2010 at the shop of the plaintiff No.1, when he was not available there. In the



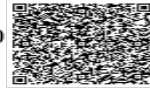
said notice, it was alleged that plaintiff No.1 had encroached the land by affixing barbed wire. However, subsequently, it was revealed that defendant Committee is claiming the entire suit property as passage and public park being a part of Town Planning Scheme No.3 Part-IV. It is reiterated that suit land is not part of any Town Planning Scheme nor has any compensation been awarded to the plaintiffs or any alternative land given to them. As such, plaintiffs have not encroached upon the public property rather they are in possession of suit property since 20 years as co-owners. Accordingly, it was prayed that a decree for declaration to the effect that the plaintiffs are joint owners of the land measuring about 28 Marlas as depicted in the head note of the plaint; as well as declaration to the effect that there does not exist any public park or public passage in the suit land; and for Permanent Injunction restraining the defendant-Committee from claiming the existence of any park or passage and from carving out any such passage by putting concrete or raising construction or brick paving or bitumen paving the same or creating any part in the aforesaid land be passed against the defendant Committee.

6. Upon notice, the defendant-Municipal Committee appeared and filed written statement questioning the maintainability of the suit. On merits, it was stated that the Scheme in question was sanctioned under the provisions of Punjab Municipal Act, 1911 (hereinafter referred to as "the Act"). As per the settled law, sanctioned Town Planning Scheme cannot be challenged in any civil Court; and the persons likely to be effected have the right to raise objections which were to be considered. Sanctioned Scheme



cannot be departed from and would apply even to plots purchased before the Scheme was sanctioned. Scope of Section 192-A and building bye laws fortified the Committee against any attempt to ignore a sanctioned Scheme. The said measures are to protect unsuspecting citizens from the nefarious motives of greedy persons who joined hands and form some company and purchase some land for setting up residential colony showing to be containing public parks, schools, dharamshalas etc. Presuming it to be a posh locality, unsuspecting persons invest in such Scheme whereafter they are duped. It was further averred that the area is being developed in larger public interest. Moreover, 70% of the plots had been sold by the land owners in accordance with the Town Planning Scheme Area No.3 Part-IV and people have built up their houses after getting the site plan/building plans sanctioned from the defendant/Committee and Municipal Council. Public money is involved in the same. All development is as per law within four corners of the Act.

7. It was further averred in the written statement that on 07.04.2010 after visiting the area, officials of the defendant Committee found that the plaintiffs had encroached upon the public street as per Town Planning Scheme by putting barbed wires. The matter was reported to the defendant Council which then issued notice to the plaintiffs under Section 172-A of the Act which was received by brother of the plaintiff. Further as per the notification No. 10896-MCII-66/28729 dated 14.10.1966 the President of India had sanctioned the Town Planning Scheme of Area No.3 Part, I, II, III, IV. It was further submitted that as per the ownership



statement Khasra No.629 is in the name of Sadhu and Amrik Singh sons of Anant Ram and the names of the present plaintiffs nowhere existence in the ownership statement as the said Khasra number consisted 12 Kanals 9 Marlas and out of that 5.28% had been taken for park and 19.1% has been taken for the public street which comes out to be 24.69% being less than 25% viz the permissive limits provided under the Punjab Municipal Act, 1911. Consequentially the plaintiffs had no right to claim the right over the parks or streets. Accordingly, with effect from the date the Town Planning scheme was sanctioned by an order of Government, no private person has any claim or ownership right over the entire land of the scheme reserved for public use, which also includes the park and street under reference. The disputed land was purchased by plaintiffs much after the sanctioning of the Town Planning Scheme. As such they have got no right and their purchase is void ab-initio.

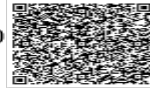
8. No replication was filed thereto by the plaintiffs.

9. From the pleadings of the parties, following issues were framed vide order dated 14.03.2011:-

“1. Whether the plaintiffs are entitled for a decree for Declaration that they are joint owners in possession of the suit property? OPP

2. Whether the plaintiffs are entitled to permanent Injunction restraining the defendants from claiming the existence of any part or passage in aforesaid land and from carving out any passage or putting concrete for constructing and brick paving in the suit property? OPP

3. Whether the suit is not maintainable? OPD



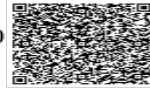
4. Whether before filing the present suit notice as required under Section 49 of the Punjab Municipal Act, 1911 was served upon the defendant committee? OPP

5. Whether the plaintiffs have not come to the Court with clean hands? OPD

6. Relief.”

10. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 and 2 against the plaintiffs and in favour of the defendant/Committee. Issue No.3 was decided against the defendant/Committee and in favour of the plaintiffs, issue No.4 was decided against the defendant/Committee and in favour of the plaintiffs; issue No.5 was not pressed during the course of arguments. Accordingly, vide judgment and decree dated 23.03.2015, the learned trial Court dismissed the suit of the plaintiffs. The appeal filed by the plaintiffs against the judgment and decree dated 23.03.2015 was dismissed by the learned Additional District Judge, Hoshiarpur, vide judgment and decree dated 27.09.2018, thereby affirming the findings of the learned trial Court. Hence, present second appeal.

11. Learned counsel for the appellants/plaintiffs inter alia submits that the judgments of the learned Courts below deserve to be set aside as the learned lower Courts have ignored the material evidence on record and dismissed the suit of the plaintiffs merely on the basis of surmises and conjectures. The plaintiffs have proved on record the Jamabandi for the year 2007-08 Ex.P-8 pertaining to the suit property according to which in the total land measuring 11 K 12 M comprised in Khasra No.629 min of which the suit property is a part, 11K 12 M is shown as "Chahi" and 5



marlas is shown as "Tubewell". There is no reference about the existence of the alleged passage in the said property. Had there been any passage as claimed by defendant, the same would have been reflected in the relevant column of said Jamabandi. Thus the judgment/decreed passed by the Courts below is illegal and is not sustainable in the eye of law.

12. It is further contended that there is no evidence on record to show that the site plans (Ex.D1 to D4) were prepared and sanctioned as per the procedure laid down under Section 192 of the Act. It is contended that had the said site plans been sanctioned and prepared as per the Town Planning Scheme No.3 Part-IV, then these would have been prepared and sanctioned in the year 1966 itself. It is contended that the suit of the plaintiffs has been dismissed by ignoring site plan (Ex.P1) duly sanctioned by the Government; and by relying upon the site plans (Ex.D1 to D4) which, as stated above, was never sanctioned as per provision of Section 192 of the Act.

13. No other argument is raised on behalf of the appellants/plaintiffs.

14. I have heard learned counsel for the appellants/plaintiffs and perused the case file in great detail.

15. I find no merit in the submissions advanced on behalf of the appellants/plaintiffs. It is the case of the plaintiffs that they had bought the suit land in 1991. They have disposed of the entire land comprising 20 K purchased in the year 1990-91 except suit land measuring 28 M borne in disputed khasra No. 629. However, it is proven on record that khasra No.



629 is part of the Notification dated 14.10.1966 (Ex.P3). It is also proven on record that as per the Scheme, the land in khasra No. 629 is reserve for parks and passage. Thus, in actual fact, the plaintiffs' are laying challenge to the Town Planning Scheme duly sanctioned and notified on 14.10.1966 by the President of India vide its letter and site plan (Ex.P2).

16. It may be pointed out that although issues No.1 and 2 were decided against the plaintiffs and in favour of the defendant/Committee, however, the learned trial Court imposed a cost of Rs.50,000/- upon the defendant/Committee as the plaintiffs had come to the Court on the basis of Farad and Jamabandi for the year 2007-08; wherein they were duly reflected as owners in possession of the suit property. The learned trial Court held that no doubt, entries in Jamabandi and Farad would not confer any title but keeping in mind the fact that the proposal for the Scheme was made in the year 1958, and the Town Planning Scheme was sanctioned on 14.10.1966 containing the ownership statement (Ex.P5) wherein 24.69% land of the owners namely Sadhu and Amrik Singh was taken out by the defendant/Committee under law for public purposes, but since then till date the defendant/Committee is constantly letting this land to be continuously reflecting the name of original owners in the revenue record. Thus, costs were imposed upon the defendant/Committee as no attempt was made by them for correction of the revenue record.

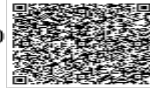
17. Though the plaintiff No.3 Sanjiv Kumar as PW3 had previously denied the suit land being part of the Town Planning Scheme, however, he has admitted that khasra No. 629 falls in the said Scheme; which has been



shown as Mark 'X' in site plan of Town Planning Scheme No.3 Part-IV (Ex.P2). This therefore proves that the disputed land falls under the Town Planning Scheme No.3 Part-IV. Khasra No. 629 is covered under Town Planning Scheme and the plaintiffs cannot be declared owners. Defendant/Committee has proved on record Ex.D1 to D5/site plans pertaining to Town Planning Scheme No.3 Part-IV; and it has been found on record that khasra No. 629 falls in Scheme No. 3 Part-IV. EX.D6 is the order of Governor of Punjab Government issuing schedule of boundary falling in Town Planning Scheme on 07.04.1959 as proposal prepared for Scheme. Moreover, Superintending Engineer as DW1 has deposed and has filed an affidavit Ex.DW1/A to the effect that area in dispute is a developed area and about 70% plots have been sold by the owners in accordance with the Town Planning Scheme Area No.3 Part IV.

18. The relevant findings of the lower Appellate Court are contained in the judgment and decree dated 27.09.2018, which read as under:-

"16. I have gone through the documents very carefully. The site plan Ex.P1 placed on the file by the plaintiffs does not contains any khasra number. Ex.P4 is an order of Hon'ble President of India dated 14.10.1966 regarding sanctioning of the scheme. The learned counsel for the appellants-plaintiffs has relied upon Ex.P5 that is regarding Scheme no.2 not regarding scheme no.3. As per Ex.P8 jamabandi for the year 2007-08 in khasra no.629, Dharam Pal and Madan Lal have been shown in column of possession being co-sharer both these plaintiffs have not come to the witness box. The most important document i.e. abstract of Town Planning Scheme



area no.3 Part IV that is Ex.D5 in which it has been clearly shown that khasra no.629 is part of Town Planning Scheme which has been sanctioned by the Hon'ble President of India in 1966 and become final and more than 70% of the houses have been constructed. From the careful perusal of Ex.D5 at Sr No.29 there is description regarding khasra no.629 i.e. part of the suit property and the original owners are shown as Sh. Sadhu Singh and Sh. Amrik Singh sons of Sh. Anant Ram and khasra no.629 is shown as part of street in scheme. Park that is area 320.10 i.e. 5.58%, 222.22 i.e. 5.96% for park and for street 1090.44 i.e.19.11%, 1430.54 i.e. 18.78%. 448.88 i.e. 12.04%, 671.10 i.e. 18%. So it has been mentioned in Ex.D5 that khasra no.629 is part of Scheme no.3 Part IV and this has been left for parks and streets.

18. *It is established that khasra no.629 is covered under the Town Planning Scheme and appellants-plaintiffs cannot be declared as owners of the property bearing khasra no.629. No doubt as per jamabandi for the year 2007-08 plaintiffs Dharam Pal and Madan Lal have been shown as co-sharer and no notice has been issued to them but the names of the present plaintiffs nowhere figure in the ownership statement. So they have no right to agitate the scheme as their names are not mentioned in the ownership statement. So the learned trial court has rightly held while deciding issues no.1 and 2 that the defendant Committee has proved on record certain documents i.e. Ex.D1 to Ex.D5 site plans pertaining to the scheme no.3 part IV. Ex.D6 is an order of Governor of Punjab issuing the schedule of boundary falling in the Town Planning Scheme dated 7.4.1959 and further rightly held that the plaintiffs could not rebut the contention that the property in dispute falls under the park and street. So the appellants-plaintiffs have no right to claim any possession over the site in*



dispute. It has been proved on record that khasra no.629 falls in Scheme No.3 Part IV.”

19. Learned counsel for the appellants/plaintiffs is unable to dispute or convert the above said facts and findings.

20. Hence, no ground is made out to interfere in the impugned judgments and decrees. The present regular second appeal is hereby **dismissed.**

21. Pending applications, if any, stand disposed of.

10.03.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No